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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,339	01/25/2002	Teddy Kosoglou	CV01490K	1512
24265	7590	01/27/2005	EXAMINER	
SCHERING-PLOUGH CORPORATION PATENT DEPARTMENT (K-6-1, 1990) 2000 GALLOPING HILL ROAD KENILWORTH, NJ 07033-0530			KANTAMNENI, SHOBHA	
			ART UNIT	PAPER NUMBER
			1617	

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/057,339

Applicant(s)

KOSOGLOU ET AL.

Examiner

Shobha Kantamneni

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,22,23,33,34,43-46 and 49 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,22,23,33,34,43-46 and 49 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04/21/04; 06/09/03;
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

05/05/03; 04/21/03

DETAILED ACTION

Claims 1-3, 11, 22, 23, 33, 34, 43-46 and 49 are pending. The Amendment received September 28, 2004, cancelled claims 2 and 11, and amended claims 1, 3, and 49.

The Applicant's amendment filed September 26, 2004 is sufficient to overcome the rejection of Claims 1-3, 11, 22-23, 33-34, 43-46 and 49 under 35 U.S.C. 112, first paragraph and second paragraph.

35 USC § 103 Rejection Maintained

The rejection of claims 1-3, 11, 22-23, 33-34 and 49 under 35 U.S.C. 103(a) as being unpatentable over Rosenblum et al. (5,846,966) in view of Chobanian et al. 112CA: 151588, 1990. is MAINTAINED for reasons set forth in the Office Action mailed 06/24/2004, 2004 and those found below.

Applicant argue's that "Rosenblum et al. do not suggest or disclose a combination of a compound of formula (I) with a cardiovascular agent selected from the group consisting of channel blockers, adrenergic blockers,". This argument is not persuasive. Rosenblum teaches a combination of compound of formula (I) with another cholesterol reducing compound a cholesterol biosynthesis inhibitor, for the treatment of atherosclerosis. Thus one would be motivated to combine captopril, which is taught as useful for reducing cholesterol and treating arteriosclerosis with another cholesterol lowering agent such formula (I) taught by Rosenblum et al. to obtain a medicament which is more effective in treating arteriosclerosis.

It is generally considered *prima facie* obvious to combine two, or more, compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the very same purpose. The idea for combining them flows logically from their having been used individually in the prior art. As shown by the recited teachings, the instant claims define nothing more than the concomitant use of conventional anti-arteriosclerosis agents. It would follow that the recited claims define *prima facie* obvious subject matter. Cf. *In re Kerhoven*, 626 F.2d 848, 205 USPQ 1069 (CCPA 1980).

In response to the applicant's argument that the examiner's rejection of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgement on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge within the level of ordinary skill in the art, at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

The rejection of claims 43-46 under 35 U.S.C. 103(a) as being unpatentable over Rosenblum et al. (5,846,966) in view of Chobanian et al. 112CA: 151588, 1990. and further in view of Lelek et al. 55CA:33966, 1960, Myasnikov, and Schaarmann et al. is MAINTAINED for reasons set forth in the Office Action mailed 06/24/2004, 2004.

Conclusion

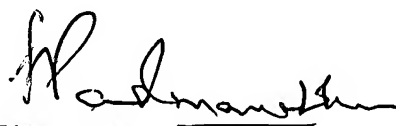
THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period, will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shobha Kantamneni whose telephone number is 571-272-2930. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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